Supreme Court, U.S.
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In The
SUPREME COURT of the UNITED STATES

James E. Miller
Petitioner,
v.

Dean Walker
Respondent.

On Petition for WRIT of CERTIORARI
To The Fourth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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James Miller
2-23-06

QUESTIONS PRESENTED

1. Whether or not the Petitioner has shown a Substantial showing of the Denial of a Constitutional Right under 28 USC 2253 (c).

2. Whether or not the Petitioner has shown a Giglio Violation with respect to the District Attorney failing to Disclose its Deal.

3. Whether or not the Petitioner's sentence should be vacated with respect to Captain Holland's admitted removal of the Photos from the Evidence and Perjured Trial Testimony.

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JURISDICTION

United States Court of Appeals decided the case on October 25, 2005. A timely Petition for Rehearing was denied on December 9, 2005 and appears at Appendix-A.

The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1)

INTRODUCTION

It is in the Petitioner's Judgment that the 4th Circuits opinion decided on October 25, 2005, in which this court DISMISSED the Petitioner's request for Certificate of Appeal ability, is in conflict with decisions of the United States Supreme Court. Material Facts and Laws were overlooked in the Court's decision and the conflicts are addressed in the opinion as Stated in this Brief. This Petition shows Police Corruption, which makes this case imperative importance as to justify this Court's Supervisory power.

POINTS TO BE RAISED

1. The Petitioner has showed a Substantial Showing of the Denial of a Constitutional Right under 28 USC 2253 (c) (2000) as set out in Slack v. McDaniel 529 US 473, 484 (2000) through the documents presented to this court.

2. The Petitioner's Documents and Evidence presented to the courts has satisfied the Standard of Demonstrating that Reasonable Jurists would find that his Constitutional Claims are debatable and that any Dispositive Procedural Rulings by the District Court are also debatable and wrong. As set out in Miller-El v. Cockrell 537 US 322, 336 (2003) and Slack v. McDaniel 529 US 473, 484 (2000).

3. Petitioner's conviction should be vacated due to Captain Holland's perjured trial testimony and the admitted removal of photos from the evidence.

PROCEDURAL HISTORY

On September 24, 1998, in the Superior Court of Wilkes County, Honorable How R. Greeson, Judge Presiding. Petitioner was convicted, after al by jury, of two counts of statutory sexual offense, five counts of taking indecent liberties with a minor, first degree sexual exploitation, and statutory rape in cases 98 CRS 1207, 1248, 1249, 2875 and 2876.

Judge Greeson sentenced Petitioner to five consecutive terms of a minimum of 19, a maximum of 23 months imprisonment on each count of taking indecent liberties with a minor, and a minimum of 77, maximum of 102 months, on the first degree sexual exploitation conviction to begin at the expiration of the previous sentences.

The court consolidated the two statutory sexual offence convictions and the statutory rape conviction and sentenced the Petitioner to a minimum of 264, maximum of 326 months imprisonment for those convictions.

After the above Petitioner fired his Trial Counsel, Gregory Brewer, and later hired Attorney John T. Hall in Raleigh to represent Petitioner on Appeal. On October 5, 1998, Petitioner's Trial Attorney filed a Motion for Appropriate Relief, which was denied in November of 1998. On November 30, 1998, former Attorney directly appealed his conviction and sentence. The Petitioner also filed Notice of Appeal Pro-se.

On April 18,2000, the North Carolina Court of Appeals issued an opinion finding error in the Petitioner's conviction of statutory sexual offense in case 98 CR5 2875 and vacated that conviction.

The Court remanded for re-sentencing because Petitioner had not been accorded the allocution right specified in N.C.G.S. § 15A-1334(b).

The Petitioner was re-sentenced on June 6, 2000 by the Honorable Judge Mike Helms.

On April 11, 2001, petitioner filed his first MAR with the Wilkes County Superior Court, which was denied on May31, 2001 by Judge Mike E. Helms. Petitioner then filed a WRIT of Certiorari with the North Carolina Court of Appeals requesting review of the denial of his

first MAR. Petitioner's WRIT of Certiorari was denied July 16, 2001. Petitioner then filed these issues on the MAR into the North Carolina Court of Appeals through his second direct appeal, which was denied by way of Court of Appeals Slip opinion on September 18, 2001.

Petitioner then filed a Federal Habeas Petition into the Western District of North Carolina. In this Petition the Petitioner contends that (a) his conviction was obtained by the unconstitutional failure of the Prosecution to disclose evidence, favorable to Petitioner; (b) his conviction was obtained by use of evidence acquired by an unconstitutional search and seizure; (c) he was denied effective assistance of counsel; (d) there was Prosecutorial misconduct.

The Honorable Judge Graham Mullin of the United States District Court denied petitioner's Federal Habeas Corpus on March 24, 2005. Petitioner filed Notice of Appeal, April 6, 2005 and the United States District Court filed it on April 8, 2005.

Petitioner then filed a Petition for a Certificate of Appeal ability into the 4th Circuit Court of Appeals which was Dismissed on October 25, 2005.

Petitioner then filed a Petition for a Rehearing, which was denied on December 9, 2005.

Petitioner now files into this court asking for Discretionary Review of his conviction.

STATEMENT OF THE CASE

The Petitioner was convicted on September 24, 1998, after a trial by jury. Petitioner fired his trial attorney Gregory Brewer no more then three days after trial. On October 5, 1998, Petitioner's former attorney filed a MAR under 15A-1414. A motion within ten days from the verdict, without the Petitioner's permission.

During this time the Petitioner sent a Pro Se letter to the court asking for an appeal. Petitioner was in the process of hiring Attorney John T. Hall to represent him on appeal, but was having a hard time raising the money.

On October 7, 1998, Judge Howard Greeson denied this MAR, and improperly encompassed it under 15A-1415. The motion filed by Attorney Brewer was under 15A-1414.

Petitioner's appellate attorney John T. Hall filed a timely appeal and the case was decided on April 18, 2000.

In the Court's opinion they vacated case no. 98 CRS 2875 and remanded the entire case back for re-sentencing. On June 6, 2001, Petitioner was re-sentenced by Judge Mike E. Helms.

During the re-sentencing hearing the Petitioner's appointed attorney Mike Klinkosum called Captain Holland to the stand. During questioning Holland admitted to removing a photo of the chief of police's son from the evidence. This puts Holland's trial testimony in question, if not perjury. The Petitioner was re-sentenced and sent back to prison.

Petitioner's trial attorney then came forward on March 16, 2001 and stated that the District Attorney came to his office after trial and admitted that the State had a deal not to prosecute it's witnesses. And that the deal had not been disclosed as required.

Petitioner on April 11, 2001, filed a Pro Se MAR into the Superior Court raising the issue of Captain Holland's perjured testimony, evidence tampering and the district attorney's failure to disclose it's deal.

On May 31, 2001, the MAR was denied by the Honorable Judge Mike E. Helms. In his order he relied on the previous MAR filed by the Petitioner's trial attorney Greg Brewer, to deny this MAR. The judge

also stated that the petition had been previously heard under 15A-1415. Using Judge Greeson's ruling where he improperly encompassed the MAR filed by Attorney Brewer. The previous MAR was under 15A-1414, therefore, Judge Helms order was in error.

The Petitioner's re-sentencing attorney then filed the petitioner's second appeal. The attorney refused to raise these issues on his appeal and filed an ANDERS brief. He made a request to the court to be removed from the case and advised the Petitioner to file his own brief. Petitioner did so raising these issues on his Pro Se MAR. Petitioner filed a full brief along with the attorney's ANDERS brief. And on September 18, 2001, the court of appeals upheld the re-sentencing hearing and denied the Petitioner's Pro Se issues.

Petitioner then filed an Appeal into the North Carolina Supreme Court and it was denied on October 4, 2001. Petitioner then filed a timely petition for habeas corpus in the United States District Court. On March 24, 2005, Judge Graham C. Mullens denied the petition without granting discovery or appointing counsel. He relied on one statement made by the Petitioner to deny the issue of Holland's removal of photos. The statement was made on page 91-93 on the re-sentencing phase of the trial. In Judge Mullens order he stated that the Petitioner previously knew that the photos were missing at trial and it could not be newly discovered. The Petitioner corrected his testimony on page 94 of the re-sentencing hearing transcript. Judge Mullens makes no mention of this in his order.

As to the issue of the deal, Judge Mullens, denied this issue because it was not raised on the first direct appeal. Petitioner only discovered the deal after his first direct appeal through the affidavit by his trial attorney Gregory Brewer, signed on March 19, 2001. Petitioner could not raise this issue because it was unknown to him or his first direct appeal attorney. Petitioner raised the issue as soon as it came to light.

The Petitioner then filed a timely request for a Certificate of Appealability into the 4th Circuit Court of Appeals, requesting a COA. On October 25, 2005, the 4th Cir. denied the request stating the Petitioner had failed to make a substantial showing of a denial of a Constitutional right. Petitioner then filed a timely petition for re-hearing

on November 4, 2005. The petition for re-hearing was denied on November 9, 2005. In both the Petition for Certificate of Appealability and the Petition for Re-Hearing, the Petitioner shows that the documents presented to the courts clearly establish a constitutional violation.

The Petitioner now requests this Court for a discretionary review. The Petitioner's facts and allegations are supported through the State and Federal Courts by affidavit and documentation. The facts support a constitutional violation.